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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

SEP 24 1990

Federal Communications Commission
Office of the Secretary

KAGAN MEDIA PARTNERS

and

EQUITABLE CAPITAL MANAGEMENT
CORPORATION

Petitions for Declaratory Ruling
Concerning Insulation of
Limited Partners In Certain
Widely-Held Limited Partnerships

MMB File No. 900924A

MM Dkt. 92-51

COMMENTS
OF
ML MEDIA PARTNERS, L.P.

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SUMMARY

ML Media Partners, L.P. supports the pending declaratory ruling requests of Kagan Media Partners and Equitable Capital Management Corporation concerning the "insulation" of the limited partners of certain widely-held public limited partnerships which are required to provide the limited partners with certain voting rights.

The widely-held public limited partnerships at issue in this proceeding are the functional equivalent of widely-held public corporations. Like corporate stockholders, the limited partners of these entities are able to influence policy essentially through their ability to vote for the addition or removal of general partners. Thus, these limited partners are unable to materially influence the partnership's media-related activities and present no possibility of circumventing the policy objectives behind the Commission's insulation criteria.

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To: The Commission

COMMENTS
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ML MEDIA PARTNERS, L.P.

ML Media Partners, L.P. ("ML Media"), by its attorneys, submits herewith the following comments in response to the Commission's August 17, 1990 Public Notice concerning the separate but related petitions for declaratory ruling filed by Kagan Media Partners, L.P. ("KMP") and Equitable Capital Management Corporation ("Equitable").¹

Equitable and KMP both seek rulings concerning the applicability of the Commission's insulation criteria to publicly-offered, widely-held limited partnerships which,

¹ See Kagan Media Partners and Equitable Capital Management Corporation Petitions for Declaratory Ruling Concerning Insulation of Limited Partners of Business Development Companies (MMB File No. 900924A), FCC Daily Digest, Public Notice, DA 90-1098 (Aug. 17, 1990).

because of various federal and state securities laws, typically are unable to meet all elements of the general criteria used by the Commission to determine whether limited partners are "properly insulated." KMP seeks its ruling in the context of the Commission's ownership attribution rules, while Equitable seeks a ruling on the applicability of the alien ownership restrictions of the Communications Act. For the reasons set forth below, ML Media fully supports the subject petitions and respectfully urges the Commission to issue the requested rulings.²

I. BACKGROUND

Both KMP and Equitable are "business development companies" organized as limited partnerships. See Request for Declaratory Ruling of Equitable ("Equitable Petition") at 4; Petition for Declaratory Ruling of KMP ("KMP Petition") at 2. Various federal and state securities laws applicable to such entities, as well as to publicly-offered limited partnerships generally, require that limited partners have the right to vote on the election and removal of general

² ML Media, as Commission records will reflect, is a public limited partnership that, since 1986, has owned and controlled various broadcast stations and cable television interests. It is also affiliated with ML Media Opportunity Partners, L.P., a separate public limited partnership which similarly owns various media properties.

partners.³ Equitable Petition at 4; KMP Petition at 4,10. The mere existence of such voting rights, however, preclude petitioners (and others) from satisfying all aspects of the insulation criteria for limited partners set forth in Corporate Ownership Reporting and Disclosure by Broadcast Licensees (Reconsideration) 58 RR 2d 604 (1985) ("Recon. Order").

In light of the foregoing, petitioners ask the Commission to rule that affording limited partners of widely-held, public partnerships certain voting rights required by securities laws does not preclude a finding that such limited partners are nevertheless adequately "insulated" from the management and operation of media properties under applicable Commission policies. Specifically, Kagan seeks a ruling that its limited partners will not hold an "attributable" interest in a licensee, while Equitable seeks a ruling that a "multiplier" may be used to determine the level of alien ownership attributable to a licensee as a result of

³ The Commission's Public Notice seems to consider the issues presented by these declaratory ruling requests in the limited context of the applicability of the insulation criteria to business development companies organized as limited partnerships. ML Media submits, however, that the requested rulings should apply to publicly-offered, widely-held limited partnerships generally to the extent they, too, are required by state or federal securities laws to afford limited partners certain voting rights which conflict with the Commission's insulation criteria.

Equitable's investment or ownership interest in such licensee.

Like KMP and Equitable, ML Media is a widely-held, public limited partnership. It has more than 17,000 limited partners, no one of which holds as much as one percent (1%) of the total limited partnership interest. Despite the highly restricted role and authority of ML Media's limited partners, and their clear non-involvement in any of ML Media's media activities, ML Media has been unable over the years to give the unqualified certification to this effect contemplated by Section 73.3555 (Note 2(g)) of the Commission's Rules and Regulations because its limited partnership interests were offered (by prospectus) to investors in all fifty states and a right of removal was required to comply with the securities laws of many of those states. However, based on its overall showing of no material involvement of its limited partners, ML Media has, in the course of acquiring numerous media properties since 1986, received a series of favorable ad hoc application decisions enabling it to treat its limited partners as exempt from attribution.⁴

⁴ Some of these application decisions are cited by KMP. See KMP Petition at 19-20.

II. DISCUSSION

A. State and Federally Mandated Voting Rights Accorded to Otherwise Exempt Limited Partners Should Not Result in the Attribution of Their Interests

The Commission's attribution rules are designed to enable it to "evaluate[] whether or not a specific ownership or positional interest conveys a degree of influence or control to its holder sufficient to warrant limitation by the media multiple ownership rules." Recon. Order, 58 RR 2d 604, 606 (1985). In the case of limited partnerships, the Commission has determined that limited partners adequately insulated from control of the partnership do not have an attributable interest. Id. at 613.

In order to determine whether a limited partner is adequately insulated, the Commission has enumerated a set of restrictions on the activities of limited partners which, if incorporated in the limited partnership agreement, presumptively demonstrate that the limited partners are insulated from control. Id. at 618-620.⁵ The restrictions

⁵ In enumerating the guidelines, the Commission expressly stated that they "serve only to indicate the type of insulation the Commission will consider in evaluating challenges to the exclusion." Id. at 619. Since the objective of the Commission in establishing the guidelines was to "distinguish between influential and non-influential ownership interests," id. at 613, the Commission clearly has the discretion to accept other types of ad hoc showings that demonstrate that limited partners are not materially involved, even if the limited partnership agreement does not expressly contain other insulating provisions.

at issue here relate solely to those placed on the ability of the limited partners to vote on the removal or addition of general partners. Id. at 619. As noted above, widely-held, public limited partnerships such as ML Media, KMP and Equitable are, typically, unable to comply with this particular element of the attribution guidelines solely because of conflicting state and federal securities laws.

The pertinent Commission regulation specifically provides that a limited partnership interest shall not be attributed to a limited partnership if such partner "is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership" 47 C.F.R. § 73.3555 Note (2) (g)(1). ML Media respectfully submits that, in the context of these particular limited partnerships, one cannot reasonably conclude that affording limited partners a right to vote on the removal of a general partner (pursuant to applicable securities laws) necessarily propels such limited partners into material involvement in the management or operation of the media activities of such partnerships.⁶ Manifestly, such provisions do not, standing alone, alter

⁶ In making its determination, the Commission should, to the extent possible, consider the federal policies behind these voting provisions. See LaRose v. FCC, 494 F.2d 1145, 1146-47, n.2 (D.C. Cir. 1974); see also Channel 64 Joint Venture, 64 RR 2d 935, 936 (1988).

either the basic partnership arrangements or the otherwise passive role of limited partners.

Indeed, as detailed more fully in KMP's Petition, limited partners in publicly-offered, widely-held limited partnerships are essentially "the functional equivalent of small, minority stockholders in a large publicly-held corporation." KMP Petition at 15. Their only potential involvement in the affairs of the limited partnership is the right to vote on the addition or removal of general partners.⁷ The Commission has determined that corporate stockholders holding less than five percent of a corporation's voting stock do not have an attributable interest in the corporation's media holdings -- irrespective of whether they are given the right to vote on the election of directors. See, e.g., 47 C.F.R. § 73.3555, Note 2(a). In our view, limited partners in limited partnerships should similarly be deemed to have a non-attributable interest to the extent their voting interest does not exceed five percent and they are otherwise not materially involved in the management or operation of the media enterprise.

Previously, in Multiple Ownership Rules (Ownership Attribution Reconsideration), 61 RR 2d 739 (1986), the

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This, of course, is in addition to the other rights which the Commission has expressly determined that limited partners may exercise consistent with the insulation criteria. See Recon. Order, 58 RR 2d at 620, n. 72.

Commission determined that "it would be inappropriate, as a matter of policy, for [it] to extend the scope of the five percent attribution threshold to encompass limited partnership interests." Id. at 746. The concerns expressed by the Commission in making that determination, however, are simply not applicable here.

The principal rationale for the Commission's refusal to extend the five percent threshold to limited partnerships generally was that the parties to a limited partnership, "through contractual arrangements, largely have the power themselves to determine the rights of the limited partners." Id. This rationale plainly does not apply to the publicly-offered limited partnerships at issue in this proceeding. In order to comply with state and federal securities laws, these entities must provide limited partners with certain limited voting rights -- voting rights that, in context, clearly do not represent material involvement in any media activities.

The Commission was also concerned that an analogy to corporate stockholders was inappropriate because the parties to a limited partnership agreement have the ability to structure their relationships so as to enable a limited partner with less than a five percent equity or voting interest to control the affairs of the partnership to a greater extent than minority stockholders of a corporation. Id. at 746.

Although ML Media agrees that, as a general proposition, the more flexible nature of limited partnerships can allow certain limited partners to exercise control disproportionate to their equity or voting interest, that issue is not of concern in the present circumstances. This is not a case in which limited partners are otherwise materially involved in the operation of the media-related activities of the partnership. On the contrary, owing to both the governing partnership agreements and the practical conditions that necessarily obtain in such widely-held public partnerships, no such material involvement is realistically possible.

Here, instead of legitimate questions concerning control, the only reason these partnerships are unable to certify full compliance with the Commission's general insulation criteria arises from their need to comply with federally or state mandated securities laws with respect to certain voting rights. Thus, since the ability of the limited partners to influence policy is derived solely from their ability to vote to remove or add a general partner, they are indeed similar to minority stockholders in large publicly traded corporations, whose only ability to influence corporate policy is through the election of directors.

In sum, the voting rights afforded to limited partners in widely-held, publicly-offered limited partnerships do not "convey the ability to materially influence the media-related

activities of the partnership." See Attribution Reconsideration, 61 RR 2d at 747. Accordingly, to the extent limited partners are otherwise uninvolved in the media-related activities of the partnership, it is appropriate to use a five percent benchmark to determine whether they hold an attributable interest in the limited partnership's media interests.⁸

B. It Is Appropriate to Use a "Multiplier" to Determine the Level of Alien Ownership in a Widely-Held, Publicly-Offered Limited Partnership in Which the Limited Partners Have No Involvement With the Partnership's Media-Related Activities Other Than the Ability to Vote for the Addition or Removal of a General Partner

Equitable seeks a declaratory ruling that the same restricted voting rights held by otherwise insulated limited partners do not preclude it from using a "multiplier" to determine the level of alien ownership of a broadcast licensee in which Equitable holds an interest. For reasons similar to those set forth above, analogy to a corporation's minority stockholders is appropriate in this instance.

⁸ This, of course, is not to say that the Commission should automatically attribute the interest of limited partners holding more than a five percent equity interest in a given limited partnership. For the reasons set forth in the attribution orders, limited partners who are able to meet the criteria set forth therein -- including the restriction on voting rights -- should be deemed to have a non-attributable interest, irrespective of their equity interest.

Section 310(b) of the Communications Act of 1934 sets forth limitations on the level of alien ownership in licensees and in corporations, or other entities, directly or indirectly controlling licensees. 47 U.S.C. § 310(b)(3), (4). For limited partnerships, the Commission determines the level of alien ownership, and compliance with the statutory benchmarks of Section 310(b), by looking to the voting or equity interest of the alien limited partners. See Citizenship Requirements of Section 310, 58 RR 2d 531, 535 (1985).

In situations in which the limited partnership holds a less than controlling interest in a licensee or holds a controlling interest in a licensee through intervening domestically organized companies, the Commission permits the use of a "multiplier" to determine the licensee's level of alien ownership. Id. at 539. The multiplier, however, is used only if it can be "demonstrate[d] that the alien is effectively insulated from active involvement in partnership affairs."⁹ Id. at 540. Alien limited partners conforming to the criteria established in the attribution proceeding will be deemed properly insulated. Id. at 540, n.50.

⁹ Thus, using the Commission's own example, if a properly insulated limited partner held a 25% equity interest in a limited partnership which, in turn, held a 22 percent interest in a licensee, the licensee will be deemed to have a level of alien ownership of 5.5%. If, on the other hand, the limited partner is not properly insulated, the level of alien ownership would be 22%. See id. at 540, n. 51.

Here, of course, Equitable and other publicly-offered limited partnerships are unable to comply with the attribution criteria for demonstrating insulation of their limited partners. Nevertheless, ML Media submits that it is appropriate to use the multiplier in situations in which the limited partners are otherwise uninvolved in the media-related activities of the limited partnership. This is so because the limited partners are, again, the functional equivalents of minority stockholders in widely held corporations. Their only ability to influence policy is through their ability to vote for the addition or removal of the general partners. Even this ability is diminished as their interest becomes further removed from the licensee. Accordingly, for the same reasons that a multiplier is used to determine the level of alien ownership in corporate entities, it should also be used to determine the level of alien ownership in widely-held limited partnerships which, but for the inclusion of certain limited partner voting rights in order to comply with securities laws, otherwise satisfy all insulation criteria.

III. CONCLUSION

In sum, the provision of certain limited voting rights to limited partners required by federal law applicable to business development companies, or by other federal and state securities laws applicable to widely-held, public limited

partnerships generally, should not result in a finding that these limited partners are not sufficiently insulated from control of the partnership. Rather, it should be acknowledged that these limited partners are the functional equivalent of stockholders in widely-held corporations and should be treated similarly. In making its decision, the Commission need not be concerned about "opening the floodgates" to requests for rulings by limited partners unwilling to comply with the established insulation criteria. Rather, petitioners merely request a pragmatic application of FCC insulation policies to a unique group of widely-held, public limited partnerships. Accordingly, for the foregoing reasons, ML Media respectfully submits that the public interest would be served by issuance of the requested rulings.

Respectfully submitted,

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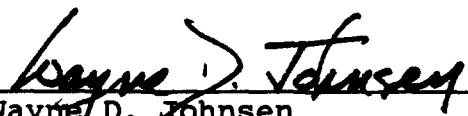
September 24, 1990

CERTIFICATE OF SERVICE

I, Wayne Johnsen, hereby certify that I have on this 24th day of September, 1990, caused copies of the foregoing "COMMENTS OF ML MEDIA PARTNERS L.P." to be mailed via first class postage prepaid United States mail to the following:

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